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4 UNITED STATES DISTRICT COURT
5 EASTERN DISTRICT OF WASHINGTON

6 KITRA LAREA YEAGER,

7 Plaintiff,

8 -vs-

9 CAROLYN W. COLVIN, Commissioner
10 of Social Security,¹

11 Defendant.

NO. CV-12-0119-WFN

ORDER GRANTING DEFENDANT'S
MOTION FOR SUMMARY
JUDGMENT

12 Before the Court are cross-Motions for Summary Judgment (ECF Nos. 16 and 18).
13 Attorney Lora Lee Stover represents Plaintiff; Special Assistant United States Attorney
14 L. Jamala Edwards represents Defendant. The Court has reviewed the administrative record
15 and briefs filed by the parties and is fully informed.

16 **JURISDICTION**

17 Plaintiff protectively applied for disability insurance and social security income
18 [SSI] benefits on November 9, 2009, alleging disability beginning on October 18, 2008,
19 due to back and nerve issues, drop foot, stomach problems, fibromyalgia, asthma,
20 polycystic ovarian disease and depression. The application(s) were denied initially and
21 on reconsideration.

22
23 ¹Carolyn W. Colvin became the Acting Commissioner of Social Security on
24 February 14, 2013. Pursuant to Rule 25(d) of the Federal Rules of Civil Procedure, Carolyn
25 W. Colvin is substituted for Michael J. Astrue as the defendant in this suit. No further action
26 need be taken to continue this suit by reason of the last sentence of 42 U.S.C. § 405(g).

ORDER GRANTING DEFENDANT'S MOTION
FOR SUMMARY JUDGMENT - 1

1 At a hearing before Administrative Law Judge [ALJ] R. J. Payne on April 21, 2011,
2 Plaintiff, represented by counsel, and medical experts John R. Morse, M.D. and Ronald
3 Klein, Ph.D testified. The Appeals Council denied review making the ALJ's decision the
4 final decision of the Commissioner. Pursuant to 42 U.S.C. § 405(g), this final decision is
5 appealable to the district court. Plaintiff sought judicial review on February 22, 2012.

6 **FACTS**

7 The facts of the case are set forth in detail in the transcript of the proceedings and are
8 briefly summarized here. At the time of the hearing, Plaintiff was 28 years old and had
9 graduated from high school. (Tr. 71) She attended community college for about a year.
10 (Tr. 72) She lives with her parents (Tr. 69) She walked with a cane and cannot walk for
11 more than half of a block. (Tr. 74) She is morbidly obese and was in the process of pursuing
12 gastric bypass surgery. (Tr. 71)

13 She testified that she has persistent back pain that is alleviated by one to two pain
14 pills a day. (Tr. 75) She periodically changes position including lying down a few times a
15 day to relax her back. (Tr. 76) During the hearing, she asked for permission to stand to
16 help keep her back more comfortable. (Tr. 81) In the past, she had worked at a call center,
17 but testified that sitting and twisting and manipulating the phone would exacerbate her
18 back pain. (Tr. 73)

19 In addition to back issues and obesity, she is on medication for several different health
20 issues including a sleep aid (Tr. 76), migraines (Tr. 79), asthma (Tr. 79), stomach issues
21 (Tr. 87) and depression (Tr. 86). According to the Plaintiff, the asthma, depression, and sleep
22 issues are well controlled with medication. (Tr. 76, 79, and 86)

23 On an average day, Plaintiff spends most of the day at home. She is not involved with
24 church or any clubs or social organizations. (Tr. 85) She helps with some housework, but
25 is unable to do any chores that involve a lot of bending over such as laundry. (Tr. 82)
26 Typically, she spends her day playing on the computer and reading, as well as going

1 to doctors' appointments. (Tr. 84 - 85) She depends on public assistance to cover her
2 expenses. (Tr. 88)

3 ADMINISTRATIVE DECISION

4 ALJ Payne found that Plaintiff met the insured status requirements and had not
5 engaged in substantial gainful activity since the alleged onset of disability. (Tr. 26) At the
6 second step, the ALJ found that Plaintiff had the following severe impairments:
7 musculoskeletal impairment of the lumbar spine, asthma, and obesity. (Tr. 26) The ALJ also
8 considered the following medical issues: eosinophilic gastroenteritis, diabetes mellitus,
9 migraine headaches, fibromyalgia, a recent knee injury, and depression, but determined each
10 was non-severe because none caused more than minimal limitation in her ability to perform
11 basic work duties, either singly or in concert with the other medical issues. (Tr. 27 - 30) At
12 the third step, the ALJ determined that Plaintiff's impairments did not meet or equal the
13 requirements of the listed impairments in 20 C.F.R. Part 404, Subpart P, Appendix 1.

14 Based on the record, the ALJ found that Plaintiff has the residual functional capacity
15 to perform a "wide range of sedentary work." (Tr. 31) At step four the ALJ determined that
16 Plaintiff could perform her past relevant work as a customer service representative at a call
17 center. (Tr. 36) Consequently, the ALJ concluded that Plaintiff is not disabled. (Tr. 36)

18 STANDARD OF REVIEW

19 In *Edlund v. Massanari*, 253 F.3d 1152, 1156 (9th Cir. 2001), the court set out the
20 standard of review:

21 A district court's order upholding the Commissioner's denial of benefits is
22 reviewed *de novo*. *Harman v. Apfel*, 211 F.3d 1172, 1174 (9th Cir. 2000).
23 The decision of the Commissioner may be reversed only if it is not supported
24 by substantial evidence or if it is based on legal error. *Tackett v. Apfel*, 180 F.3d
25 1094, 1097 (9th Cir. 1999). Substantial evidence is defined as being more
26 than a mere scintilla, but less than a preponderance. *Id.* at 1098. Put another
way, substantial evidence is such relevant evidence as a reasonable mind
might accept as adequate to support a conclusion. *Richardson v. Perales*, 402
U.S. 389, 401 (1971). If the evidence is susceptible to more than one rational

1 interpretation, the court may not substitute its judgment for that of the
2 Commissioner. *Tackett*, 180 F.3d at 1097; *Morgan v. Commissioner of Social*
3 *Sec. Admin.* 169 F.3d 595, 599 (9th Cir. 1999).

4 The ALJ is responsible for determining credibility, resolving conflicts in
5 medical testimony, and resolving ambiguities. *Andrews v. Shalala*, 53 F.3d
6 1035, 1039 (9th Cir. 1995). The ALJ's determinations of law are reviewed *de*
7 *novo*, although deference is owed to a reasonable construction of the applicable
8 statutes. *McNatt v. Apfel*, 201 F.3d 1084, 1087 (9th Cir. 2000).

9 It is the role of the trier of fact, not this court, to resolve conflicts in evidence.
10 *Richardson*, 402 U.S. at 400. If evidence supports more than one rational interpretation, the
11 court may not substitute its judgment for that of the Commissioner. *Tackett*, 180 F.3d at
12 1097; *Allen v. Heckler*, 749 F.2d 577, 579 (9th Cir. 1984). Nevertheless, a decision
13 supported by substantial evidence will still be set aside if the proper legal standards were not
14 applied in weighing the evidence and making the decision. *Browner v. Secretary of Health*
15 *and Human Services*, 839 F.2d 432, 433 (9th Cir. 1988). If substantial evidence exists to
16 support the administrative findings, or if conflicting evidence exists that will support a
17 finding of either disability or non-disability, the Commissioner's determination is conclusive.
18 *Sprague v. Bowen*, 812 F.2d 1226, 1229-1230 (9th Cir. 1987).

19 SEQUENTIAL PROCESS

20 The Commissioner has established a five-step sequential evaluation process for
21 determining whether a person is disabled. 20 C.F.R. §§ 404.1520(a), 416.920(a); *see Bowen*
22 *v. Yuckert*, 482 U.S. 137, 140-42 (1987). In steps one through four, the burden of proof rests
23 upon the claimant to establish a prima facie case of entitlement to disability benefits.
24 *Tackett*, 180 F.3d at 1098-99. This burden is met once a claimant establishes that a physical
25 or mental impairment prevents him from engaging in his previous occupation. 20 C.F.R.
26 §§ 404.1520(a)(4), 416.920(a)(4). If a claimant cannot do his past relevant work, the
ALJ proceeds to step five, and the burden shifts to the Commissioner to show that (1) the
claimant can make an adjustment to other work; and (2) specific jobs exist in the national

1 economy which claimant can perform. *Batson v. Commissioner of Social Sec. Admin.*, 359
 2 F.3d 1190, 1193-94 (2004). If a claimant cannot make an adjustment to other work in the
 3 national economy, a finding of "disabled" is made. 20 C.F.R. §§ 404.1520(a)(4)(I-v),
 4 416.920(a)(4)(I-v).

5 ISSUES

6 Plaintiff argues that the ALJ improperly assessed Plaintiff's impairments at step two
 7 and Plaintiff's residual functional capacity. Plaintiff believes that the ALJ should have found
 8 fibromyalgia, gastrointestinal problems, migraines and depression to be severe impairments
 9 pursuant to 20 C.F.R. 404.1520 and 416.920. Based on these assignments of error, Plaintiff
 10 argues that the ALJ's opinion is not supported by substantial evidence.

11 DISCUSSION

12 An impairment is severe if it, singly or in combination with other impairments,
 13 "significantly limits [the claimant's] physical or mental ability to do basic work activities."
 14 20 C.F.R. § 404.1520. "An impairment or combination of impairments can be found 'not
 15 severe' only if the evidence establishes a slight abnormality that has no more than a minimal
 16 effect on an individual's ability to work.' *Smolen v. Chater*, 80 F.3d 1273, 1290 (9th Cir.
 17 1996) (internal citation omitted). "Impairments that can be controlled effectively with
 18 medication are not disabling for the purpose of determining eligibility for SSI benefits."
 19 *Warre v. Comm'r of Soc. Sec. Admin.*, 439 F.3d 1001, 1006 (9th Cir. 2006). "[E]vidence of
 20 'conservative treatment' is sufficient to discount a claimant's testimony regarding severity of
 21 an impairment." *Tommasetti v. Astrue*, 533 F.3d 1035, 1039 (9th Cir. 2008).

22 The ALJ exhaustively reviewed each condition addressed by Plaintiff and made
 23 specific findings, supported by substantial evidence, regarding of the severity of
 24 fibromyalgia, gastrointestinal problems, migraines and depression. In each case, the ALJ
 25 noted that any limitations caused by the impairment, considered singly or in combin-
 26 ation with other impairments imposed no more than minimal limitations on Plaintiff's

1 ability to perform basic work-related activities. The ALJ noted that Plaintiff's
2 fibromyalgia and depression were controlled well by medication. (Tr. 28 and 29) However,
3 the ALJ still took into account the symptoms stemming from Plaintiff's mental health
4 impairments when making the residual function capacity determination. The migraines
5 were also managed by medication. The medical records showed visits to the emergency
6 room about two times a year, but that the medication resulted in good pain relief. (Tr. 28)
7 Regarding the gastrointestinal issues, the ALJ found that Plaintiff's history of
8 non-compliance with treatment undermined her assertion that the symptoms were as severe
9 as she indicated.

10 In making a determination of residual functional capacity, the ALJ must consider all
11 of the claimant's medically determinable impairments, including medically determinable
12 impairments that are not severe. 20 C.F.R. § 404.1545(a)(2), 20 C.F.R. 416.945, 20
13 C.F.R. § 404.1523. The ALJ must consider claimant's ability to meet the physical, mental,
14 sensory, and other requirements of work. *Id.* Plaintiff complained that the ALJ ignored
15 the effects of pain, morbid obesity, and depression when making the residual functional
16 capacity determination. However, the ALJ carefully reviewed the record and properly
17 found pain testimony that did not comport with the evidence, especially the self reports by
18 Plaintiff to her doctors and Plaintiff's reports of her daily activities. The ALJ also pointed
19 out that Plaintiff's "medication usage undermines her allegations of debilitating pain."
20 (Tr. 33) The ALJ did address limitations that likely are exacerbated by morbid obesity, such
21 as Plaintiff's back issues, but did not discuss with specificity Plaintiff's need to use a
22 handicap stall. Such an omission does not invalidate the residual functional capacity, as it
23 is not clear how use of the handicap stall affects Plaintiff's ability to work. Lastly, contrary
24 to Plaintiff's assertion, the ALJ did address the effects of Plaintiff's mental health issues, but
25 found that due to the fact that the depression was treated effectively with medication, it had
26 no effect on Plaintiff's residual functional capacity.

CONCLUSION

Having reviewed the record and the ALJ's findings, the Court concludes the ALJ's decision is supported by substantial evidence and is not based on legal error. Accordingly,

IT IS ORDERED that:

1. Defendant's Motion for Summary Judgment, filed December 17, 2012, **ECF No. 18**, is **GRANTED**.

2. Plaintiff's Motion for Summary Judgment, filed November 5, 2012, **ECF No. 16**, is **DENIED**.

The District Court Executive is directed to file this Order and provide copies to counsel. Judgment shall be entered for Defendant and the file shall be **CLOSED**.

DATED this 19th day of September, 2013.

s/ Wm. Fremming Nielsen

WM. FREMMING NIELSEN

SENIOR UNITED STATES DISTRICT JUDGE

09-17-13